

CAUSE NO. **D-1-GN-18-001968**

TEXAS ASSOCIATION OF BUSINESS, §  
 NATIONAL FEDERATION OF §  
 INDEPENDENT BUSINESS, §  
 AMERICAN STAFFING ASSOCIATION, §  
 LEADINGEDGE PERSONNEL, LTD., §  
 STAFF FORCE, INC., §  
 HT STAFFING LTD., D/B/A THE HT §  
 GROUP and THE BURNETT §  
 COMPANIES CONSOLIDATED, INC. §

*Plaintiffs,*

v.

CITY OF AUSTIN, TEXAS, §  
 STEVE ADLER, §  
 MAYOR OF THE CITY OF AUSTIN, and §  
 SPENCER CRONK, CITY MANAGER §  
 OF THE CITY OF AUSTIN, §

*Defendants.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

**459TH** JUDICIAL DISTRICT

**ORIGINAL PETITION, APPLICATION FOR TEMPORARY AND  
 PERMANENT INJUNCTIVE RELIEF, REQUEST FOR DISCLOSURE,  
 AND NOTICE OF HEARING**

Plaintiffs Texas Association of Business, National Federation of Independent Business, American Staffing Association, LeadingEdge Personnel, Ltd., Staff Force, Inc., HT Staffing Ltd., d/b/a The HT Group, and The Burnett Companies Consolidated, Inc. d/b/a Burnett Specialists (collectively, the "Plaintiffs"), file this Original Petition, Application for Temporary and Permanent Injunctive Relief, Request for Disclosure, and Notice of Hearing against Defendants City of Austin (the "City"), Steve Adler in his official capacity as the Mayor of the City of Austin, and Spencer Cronk in his official capacity as City Manager of the City of Austin (collectively, the "Defendants"), and in support show the Court as follows:

## **I. EXECUTIVE SUMMARY**

On February 15, 2018, the City of Austin enacted an ordinance Austin, Tex., Ordinance No. 20180215-049 (February 15, 2018) mandating that private employers provide paid sick leave to their employees (the “Paid Sick Leave Ordinance”). The Texas Minimum Wage Act prohibits municipalities, such as the City of Austin, from regulating the wages of employees of private businesses, incorporating the standards of the federal Fair Labor Standards Act into state law, but further preempting any municipal ordinances from going beyond those standards. Through the Texas Minimum Wage Act and FLSA, Texas state law caps the minimum wage at the federal rate. In direct conflict, the Paid Sick Leave Ordinance requires that employers must pay minimum-wage to employees for hours not actually worked. The effect is to push their hourly wage above the minimum-wage ceiling set by Texas law.

Because the Paid Sick Leave Ordinance conflicts with Texas statutory law, it is preempted, invalid, and of no force or effect. Accordingly, Plaintiffs seek a declaratory judgment that the Paid Sick Leave Ordinance is preempted by Texas state law, a temporary injunction to prevent it from going into effect, and a permanent injunction after trial.

Moreover, the Paid Sick Leave Ordinance violates Plaintiffs’ rights arising under the Texas Constitution, including economic rights under the Due Course of Law Clause, the equal protection of the law for non-unionized employers, and the right to be free of unreasonable searches and seizures. Plaintiffs seek a declaratory judgment that the Paid Sick Leave Ordinance violates Plaintiffs’ rights under the Texas Constitution, a temporary injunction to prevent it from going into effect, and a permanent injunction after trial.

## **II. DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct Level 2 discovery under Rule 190 of the Texas Rules of Civil Procedure.

## **III. PARTIES**

### **A. PLAINTIFFS**

#### ***Texas Association of Business***

2. Texas Association of Business (“TAB”) is the State Chamber of Commerce comprised of over 4,000 business members and 200 local chamber partners. TAB has a more than 96-year history of representing Texas businesses, large and small. Its members include businesses operating in the City of Austin who will be affected by the provisions of the Paid Sick Leave Ordinance. TAB joins in this action on behalf of its members operating in the City of Austin.

#### ***National Federation of Independent Business***

3. The National Federation of Independent Business (“NFIB”) is a California nonprofit mutual benefit corporation. It is the nation’s leading association of small businesses, representing members in Washington, D.C., and all 50 states. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB’s mission is to promote and protect the rights of its members to own, operate, and grow in their businesses. NFIB’s members include small businesses operating in the City of Austin who will be affected by the provisions of the Paid Sick Leave Ordinance. NFIB joins in this action on behalf of its members operating in the City of Austin.

#### ***American Staffing Association***

4. The American Staffing Association (“ASA”) is a District of Columbia nonprofit corporation and the leading voice for interests of the staffing, recruiting, and workforce solutions industry. ASA and its affiliated chapters advance the interests of the industry across all sectors

through advocacy, research, and education. The ASA Texas Council, an ASA committee, is the voice of the staffing industry in Texas. ASA's members include staffing businesses operating in the City of Austin who will be affected by the provisions of the Paid Sick Leave Ordinance. ASA joins in this action on behalf of its members operating in the City of Austin.

***LeadingEdge Personnel, Ltd.***

5. LeadingEdge Personnel, Ltd., is a for-profit corporation incorporated in the State of Texas. It provides temporary staffing in various industries, employing a number of temporary employees within the City of Austin at any given time. LeadingEdge Personnel, Ltd. operates in the City of Austin and will be affected by the provisions of the Paid Sick Leave Ordinance. LeadingEdge Personnel, Ltd. is an ASA member.

***Staff Force, Inc.***

6. Staff Force, Inc., is a for-profit corporation incorporated in the State of Texas. It provides temporary staffing in various industries, employing a number of temporary employees within the City of Austin at any given time. Staff Force, Inc. operates in the City of Austin and will be affected by the provisions of the Paid Sick Leave Ordinance. Staff Force, Inc. is an ASA member.

***HT Staffing Ltd.***

7. HT Staffing Ltd., d/b/a The HT Group, is a for-profit corporation incorporated in the State of Texas. It provides temporary staffing in various industries, employing a number of temporary employees within the City of Austin at any given time. HT Staffing Ltd., d/b/a The HT Group, operates in the City of Austin and will be affected by the provisions of the Paid Sick Leave Ordinance. HT Staffing Ltd. d/b/a The HT Group, is an ASA member.

***The Burnett Companies Consolidated, Inc.***

8. The Burnett Companies Consolidated, Inc. *d/b/a* Burnett Specialists is a for-profit corporation incorporated in the State of Texas. It provides temporary staffing in various industries, employing a number of temporary employees within the City of Austin at any given time. The Burnett Companies Consolidated, Inc. *d/b/a* Burnett Specialists operates in the City of Austin as Burnett Specialists and will be affected by the provisions of the Paid Sick Leave Ordinance. The Burnett Companies Consolidated, Inc. *d/b/a* Burnett Specialists is an ASA member.

**B. DEFENDANTS**

9. Defendants are the City of Austin, Steve Adler, in his official capacity as Mayor of the City of Austin, and Spencer Cronk, in his official capacity as City Manager of the City of Austin.

10. The City of Austin is a home-rule municipality headquartered in Travis County, Texas.

11. Defendant Adler is the duly elected Mayor of the City of Austin.

12. Defendant Cronk is the City Manager of the City of Austin, responsible for the day-to-day operations of the City.

13. Pursuant to Texas Civil Practice and Remedies Code Section 17.024(b), Defendants the City of Austin, Adler, and Cronk may be served by serving the mayor, clerk, secretary, or treasurer of the City at 301 West 2<sup>nd</sup> Street, Austin, Texas 78701. Plaintiffs request that the Clerk issue citation and service of process on all Defendants.

14. Because this suit raises a constitutional challenge to the Paid Sick Leave Ordinance, the Attorney General of Texas is required to be served with process at 300 W. 15th Street, Austin, Texas 78701, as required by Texas Civil Practice and Remedies Code Section 37.006(b). Plaintiffs

request that the Clerk issue citation and service of process upon the Texas Attorney General.

#### **IV. JURISDICTION AND VENUE**

15. Jurisdiction is proper in this Court pursuant to Article V, Section 1 and 8 of the Texas Constitution and Sections 24.007 and 24.008 of the Texas Government Code. This Court has subject matter jurisdiction because Plaintiffs seek to vindicate their rights under the Texas Constitution via the Uniform Declaratory Judgments Act. TEX. CIV. PRAC. & REM. CODE § 37.003.

16. Venue is appropriate in Travis County pursuant to Sections 15.002(a)(3), 15.005, 15.011, and 65.023 of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to the claim occurred in Travis County.

#### **V. STATEMENT OF FACTS**

##### **A. THE PAID SICK LEAVE ORDINANCE**

17. On February 15, 2018, the City of Austin enacted the Paid Sick Leave Ordinance, mandating that private employers provide paid sick leave to their employees. Austin, Tex., Ordinance No. 20180215-049 (February 15, 2018).

18. The City of Austin made several “[f]indings” included in the text of the Paid Sick Leave Ordinance:

- (A) The council finds that most workers in the City of Austin will at some time during each year need limited time off from work to care for their own health and safety needs or the health and safety needs of a close family member.
- (B) The council further finds that denying earned sick time to employees:
  - (1) is unjust;
  - (2) is detrimental to the health, safety, and welfare of the residents of the City; and
  - (3) contributes to employee turnover and unemployment, and harms the local economy.

The council further finds that it is within the police power and the

responsibility of the City to remedy the problems enumerated in parts (A) and (B) of this Section.

Austin, Tex., Ordinance No. 20180215-049, at Part 1 (February 15, 2018).

19. The Paid Sick Leave Ordinance will begin to be enforced on October 1, 2018, except as to employers having no more than five employees at any time in the last 12 months; for those, it goes into effect on October 1, 2020. Austin, Tex., Ordinance No. 20180215-049, at Parts 5-6 (February 15, 2018).

20. The Paid Sick Leave Ordinance covers all employees who “perform at least 80 hours of work for pay within the City of Austin in a calendar year for an employer, including work performed through the services of a temporary or employment agency.” Austin, Tex., Ordinance No. 20180215-049, at § 4-19-1(C) (February 15, 2018).

21. The Paid Sick Leave Ordinance requires employers to “grant an employee one hour of earned sick time for every 30 hours worked for the employer in the City of Austin;” this accrual begins on the start date of employment, or at the date the Paid Sick Leave Ordinance is “effective, whichever is later.” Austin, Tex., Ordinance No. 20180215-049, at § 4-19-2(A)-(B) (February 15, 2018).

22. The Paid Sick Leave Ordinance requires “[t]he employer [to] pay earned sick time in an amount equal to what the employee would have earned if the employee had worked the scheduled work time, exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage.” Austin, Tex., Ordinance No. 20180215-049, at § 4-19-2(J) (February 15, 2018).

23. The Paid Sick Leave Ordinance requires that “[o]n no less than a monthly basis, an employer shall provide electronically or in writing to each employee a statement showing the amount of the employee’s available earned sick time,” Austin, Tex., Ordinance No. 20180215-

049, at § 4-19-2(K) (February 15, 2018), requiring employers to track hours worked even for employees paid on a salary basis and exempt from FLSA rules.

24. The Paid Sick Leave Ordinance requires employers to allow an

Employee [to] request earned sick time . . . for an absence from the employee's scheduled work time caused by:

(1) The employee's physical or mental illness or injury, preventative medical or health care, or health condition; or

(2) The employee's need to care for a family member's physical or mental illness, preventative medical or health care, injury, or health condition; or

(3) The employee's need to seek medical attention, seek relocation, obtain services from a victim's services organization, or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or employee's family member.

Austin, Tex., Ordinance No. 20180215-049, at § 4-19-2(D) (February 15, 2018).

25. The Paid Sick Leave Ordinance requires employers with more than 15 employees at any time within the last 12 months (deemed "medium or large employers") to provide their employees up to a maximum of 64 hours of paid sick leave a year, and requires covered employers with 15 or fewer employees at any time within the last 12 months (deemed "small employers") to provide their employees up to a maximum of 48 hours of paid sick leave per year. Austin, Tex., Ordinance No. 20180215-049, at § 4-19-2(G) (February 15, 2018); *id.* at § 4-19-1(F), (H).

26. The Paid Sick Leave Ordinance requires employers to "display a sign describing the requirements of this Chapter . . .," Austin, Tex., Ordinance No. 20180215-049, at § 4-19-4(A) (February 15, 2018), and requires "[a]n employer that provides an employee handbook to its employees must include in the handbook notice of [the paid sick leave obligations in the ordinance]." *Id.* at § 4-19-2(L).



27. The Paid Sick Leave Ordinance provides that “[n]either the amount of earned sick time nor the right to use earned sick time shall be affected by an employee’s transfer to a different facility, location, division, or job position with the same employer.” Austin, Tex., Ordinance No. 20180215-049, at § 4-19-4(N) (February 15, 2018). The City of Austin by this provision requires employers who have employees within the City to apply the mandates of the Paid Sick Leave Ordinance even when those employees are later working outside the jurisdiction of the City.

28. The Paid Sick Leave Ordinance permits unionized employers operating with a collective bargaining agreement to “modify the yearly cap” of paid sick leave. Austin, Tex., Ordinance No. 20180215-049, at § 4-19-2(P) (February 15, 2018).

29. The Paid Sick Leave Ordinance empower “[t]he director of the EEO/FHO [to] subpoena relevant information during the investigation of a complaint under this Chapter. Relevant information includes, and is limited to, only the information necessary to determine whether a violation of this Chapter has occurred.” Austin, Tex., Ordinance No. 20180215-049, at § 4-19-7(A) (2018). This includes pursuant to “anonymous complaints, alleging a violation of this Chapter.” *Id.* at § 4-19-6(A)(2).

30. Employers who violate the requirements of the Paid Sick Leave Ordinance face “a civil penalty up to \$500 against the employer for each violation.” Austin, Tex., Ordinance No. 20180215-049, at § 4-19-6(C)(1) (February 15, 2018).

31. The Paid Sick Leave Ordinance creates a criminal offense “if the person fails to comply with a subpoena issued and served on the person as provided in Part A. The offense is punishable as a Class C misdemeanor as provided in Section 1-1-99 of this Code. A culpable mental state is not a necessary element of the offense.” Austin, Tex., Ordinance No. 20180215-049 at § 4-19-7(B) (2018).

## **B. THE TEXAS MINIMUM WAGE ACT**

32. The Texas Minimum Wage Act, with a few exceptions not relevant here, pegs the minimum wage in Texas to that set by the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 206. Tex. Labor Code § 62.051.

33. Although the FLSA on its own does not preempt any higher wages set by states or localities, the Texas Minimum Wage Act explicitly prevents localities from requiring private employers to pay above the wage set by the FLSA. Tex. Labor Code § 62.0515 (“the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment.”); *id.* at § 62.151 (“This chapter and a municipal ordinance or charter provision governing wages in private employment, other than wages under a public contract, do not apply to a person covered by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.)”).

34. The FLSA and its implementing regulations require that the pay for employees be evaluated for compliance with the minimum wage by the work week, not by the hour, and only require pay for hours actually worked on behalf of the employer. In contrast, the Paid Sick Leave Ordinance requires employers to track hours worked even for employees paid on a salary basis and exempt from FLSA rules.

35. A related provision in the Texas Labor Code, the Texas Payday Law, provides a definition for the term “wages.” That provision is the remedy for employees owed wages by their employers, to use to recover that compensation, and it defines “wages” as including “compensation owed by an employer for . . . sick leave pay . . . owed to an employee under a written agreement with the employer or under a written policy of the employer.” Tex. Labor Code § 61.001(7)(B).

### **C. EFFECT OF THE PAID SICK LEAVE ORDINANCE ON PLAINTIFFS**

36. In anticipation of the October 1, 2018, commencement date of the Paid Sick Leave Ordinance, Plaintiffs are forced to expend resources to comply with the Paid Sick Leave Ordinance's mandates when it becomes effective, such as hiring additional staff or purchasing software to track compliance.

37. When the Paid Sick Leave Ordinance goes into effect, Plaintiffs will be forced to adjust the mix of the overall compensation and the scheduling for its employees operating in the City of Austin.

38. Under current law, if an employee who normally works 40 hours a week took one 8-hour day off sick, employers such as Plaintiffs would only be required to pay the employee at least the minimum wage for the hours actually worked: 32. After the Paid Sick Leave Ordinance goes into effect, under the same scenario, employers such as Plaintiffs would be required to pay at least the minimum wage for forty hours. This means that the Paid Sick Leave Ordinance increases wages for the work week beyond that required by the Texas Minimum Wage Act.

39. If the Paid Sick Leave Ordinance goes into effect, Plaintiffs' operations in the City of Austin will face a competitive disadvantage, in both attracting employees and providing services, compared to the operations of similar businesses operating exclusively outside the City of Austin, because no other municipalities in Texas have mandates like the Paid Sick Leave Ordinance.

40. If the Paid Sick Leave Ordinance goes into effect, Plaintiffs' operations in the City of Austin will face a competitive disadvantage with unionized employers, because the latter have the right to modify the cap on paid sick leave hours mandated by the Paid Sick Leave Ordinance. Plaintiffs are denied this same flexibility in determining the overall mix of compensation for its

employees as a result of this discriminatory provision.

41. If the Paid Sick Leave Ordinance goes into effect, employers in the position of Plaintiff staffing companies will have special burdens due to the itinerant and mobile nature of their workforce. Keeping track of how many hours of the day each employee is working within the City of Austin, as opposed to nearby cities, will be an enormous undertaking.

42. Also, staffing companies will have to pay double the labor cost when employees use the benefits mandated by the Paid Sick Leave Ordinance because of the nature of their business. For example, consider a scenario where a business has an employee out sick, and asks a staffing company to provide a temporary one. If the staffing company calls an employee to see if he is available to work the position for 8 hours that day, and the employee responds that he is ill and will now take his paid sick leave, the staffing company will have to pay him for 8 hours and also pay another employee for 8 hours to work the vacant position.

## **VI. CAUSES OF ACTION**

### **A. COUNT ONE: THE PAID SICK LEAVE ORDINANCE IS PREEMPTED BY THE TEXAS MINIMUM WAGE ACT.**

43. The preceding paragraphs are realleged and incorporated by reference.

44. The Texas Minimum Wage Act prohibits municipalities, such as the City of Austin, from regulating the wages of employees of private businesses, incorporating the standards of the federal Fair Labor Standards Act into state law, but further preempting any municipal ordinances going beyond those standards.

45. Under the FLSA, employers are only required to pay wages for hours actually worked; for those hours not actually worked, the minimum wage is \$0.00. But the Paid Sick Leave Ordinance requires employers to pay at least the current minimum wage for those hours not actually worked that are covered by the mandated sick leave.

46. The FLSA and its implementing regulations require that the pay for employees be evaluated for compliance with the minimum wage by the work week, not by the hour or day.

47. Under current law, if an employee who normally works 40 hours a week took one 8-hour day off sick, the employer would only be required to pay the employee at least the minimum wage for the hours actually worked: 32.

48. After the Paid Sick Leave Ordinance goes into effect, under the same scenario, the employer would be required to pay at least the minimum wage for forty hours. This means that the Paid Sick Leave Ordinance has the actual effect of increasing wages for the work week above the cap set by the Texas Minimum Wage Act.

49. Pursuant to Texas' Uniform Declaratory Judgments Act, Plaintiffs request that this Court enter a judgment declaring the Paid Sick Leave Ordinance to be preempted by the Texas Minimum Wage Act.

**B. COUNT TWO: THE PAID SICK LEAVE ORDINANCE VIOLATES PLAINTIFFS' SUBSTANTIVE RIGHTS UNDER THE TEXAS DUE COURSE OF LAW CLAUSE.**

50. The preceding paragraphs are realleged and incorporated by reference.

51. Pursuant to Texas' Uniform Declaratory Judgments Act, Plaintiffs respectfully request that this Court enter a judgment declaring the Paid Sick Leave Ordinance to be a violation of the substantive Due Course of Law Clause contained in Article 1, Section 19, of the Texas Constitution.

52. Article I, Section 19 of the Texas Constitution protects citizens from the deprivation of "life, liberty, [or] property . . . except by the due course of the law of the land."

53. An economic regulation is unconstitutional under Section 19's substantive due course of law requirement if, when considered as a whole, the provision's actual, real-world effect

as applied to the challenging party is not rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest. Courts must look at the factual underpinning of any purported governmental interest.

54. The City of Austin's articulated governmental interests are factually unsupported, and the mandates of the Paid Sick Leave Ordinance have no rational connection to furthering those interests.

55. Moreover, even if the mandates of the Paid Sick Leave Ordinance had some basis related to a legitimate governmental interest, its actual, real-world effect as applied to Plaintiffs is so burdensome as to be oppressive in light of the alleged governmental interest.

56. Thus, Plaintiffs ask this Court to declare the Paid Sick Leave Ordinance in violation of Article I, § 19 of the Texas Constitution.

**C. COUNT THREE: THE PAID SICK LEAVE ORDINANCE VIOLATES PLAINTIFFS' RIGHT TO EQUAL PROTECTION.**

57. The preceding paragraphs are realleged and incorporated by reference.

58. Pursuant to Texas' Uniform Declaratory Judgments Act, Plaintiffs further ask this Court to declare the Paid Sick Leave Ordinance a violation of Plaintiffs' right to equal protection under Article I, § 3 of the Texas Constitution.

59. Article I, § 3 of the Texas Constitution guarantees that "[a]ll free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges."

60. By exempting only unionized employers operating with a collective bargaining agreement to "modify the yearly cap" of paid sick leave, while denying this right to non-unionized employers, the Paid Sick Leave Ordinance creates a distinction between unionized employers and non-unionized employers that is not rationally related to any legitimate governmental interest, and

fails to serve a compelling governmental interest sufficient to overcome strict scrutiny necessitated by the discriminatory provision's burden on the freedom of association.

61. Thus, Plaintiffs ask this Court to declare the Paid Sick Leave Ordinance in violation of Article I, § 3 of the Texas Constitution.

**D. COUNT FOUR: THE PAID SICK LEAVE ORDINANCE AUTHORIZES UNREASONABLE WARRANTLESS SEARCHES.**

62. The preceding paragraphs are realleged and incorporated by reference.

63. Pursuant to Texas' Uniform Declaratory Judgments Act, Plaintiffs further ask this Court to declare that the Paid Sick Leave Ordinance violates Plaintiffs' freedom from unreasonable search and seizure.

64. The Texas Constitution protects citizens from unreasonable searches, providing:

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Tex. Const. art. I, § 9.

65. There is a clearly established legal right to an opportunity to obtain pre-compliance review of an administrative subpoena before a neutral decisionmaker.

66. The Paid Sick Leave Ordinance requires licensees to submit to unreasonable administrative subpoenas with no provision for judicial review before being required to comply.

67. Plaintiffs request this Court to declare that § 4-19-7 of the Paid Sick Leave Ordinance violates, on its face, Plaintiffs' freedom from unreasonable search and seizure under Article I, § 9 of the Texas Constitution.

**VII. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

68. The preceding paragraphs are realleged and incorporated by reference.

69. An injunction must issue where a party is acting contrary to law.

70. The denial of a constitutionally guaranteed right, as a matter of law, inflicts an irreparable injury.

71. Enforcement of the Paid Sick Leave Ordinance is preempted by the Texas Minimum Wage Act, and violates the Texas Constitution, which guarantees Plaintiffs' rights to economic liberty under the Due Course of Law Clause, equal protection, and freedom from unreasonable search and seizure.

72. By being subjected to the requirements of an ordinance void due to preemption by state law, Plaintiffs have suffered irreparable injury.

73. By having their constitutional rights denied, Plaintiffs have suffered irreparable injury.

74. Plaintiffs are facing imminent and irreparable harm from the City of Austin's enforcement of the Paid Sick Leave Ordinance.

75. Plaintiffs have no other adequate legal to adequately compensate for the continued deprivation of their constitutional rights and to prevent the unlawful violation of state law by the City of Austin.

76. Plaintiffs will incur expenses in preparing to comply with the Paid Sick Leave Ordinance, which must happen months before the Paid Sick Leave Ordinance's mandates are enforced on October 1, 2018, and will have no adequate legal remedy to recover damages for any such expense.

77. Plaintiffs will incur expenses in compensation for employees for time that is not required to be compensated for under current law (*i.e.*, pay for hours not actually worked) once they are forced to comply with the Paid Sick Leave Ordinance's mandates on October 1, 2018,



and will have no adequate legal remedy to recover damages for any such expenses.

78. Because the Paid Sick Leave Ordinance will not be enforced until October 1, 2018, the status quo would be preserved by a temporary injunction against the enforcement of the Paid Sick Leave Ordinance.

79. Plaintiffs respectfully ask the Court to issue temporary and, following trial on the merits, permanent injunctions against the City of Austin, enjoining the City's enforcement of the Paid Sick Leave Ordinance.

#### **VIII. ATTORNEYS' FEES**

80. Under the Uniform Declaratory Judgments Act Plaintiffs are entitled to recover "costs and reasonable and necessary attorney's fees as are equitable and just." Tex. Civ. Prac. & Rem. Code Ann. § 37.009.

81. Plaintiffs seek award of their reasonable attorneys' fees for the preparation of this suit, prosecution of this suit, and all appeals.

#### **IX. REQUEST FOR DISCLOSURE**

82. Plaintiffs request that Defendants disclose the information and materials described in Rule 194.2 of the Texas Rules of Civil Procedure.

#### **X. NOTICE OF HEARING**

83. Please take notice that a hearing on Plaintiffs' Application for a Temporary Injunction will take place on May 29, 2018, at 9:00 AM at the Travis County Courthouse, 1000 Guadalupe Street, Austin, Texas 78701. This hearing is estimated to take 6.5 hours.

#### **XI. PRAYER AND CONCLUSION**

**THEREFORE**, Plaintiffs request the Court issue the following relief:

- i. A declaration that the Paid Sick Leave Ordinance is preempted and unenforceable

- in its entirety because it conflicts with the Texas Minimum Wage Act;
- ii. A declaration that the Paid Sick Leave Ordinance is a violation of Plaintiffs' rights under the Due Course of Law Clause of the Texas Constitution;
  - iii. A declaration that the Paid Sick Leave Ordinance is a violation of Plaintiffs' right to equal protection under the Texas Constitution;
  - iv. A declaration that the Paid Sick Leave Ordinance is a violation of Plaintiffs' freedom from unreasonable search and seizure protected under the Texas Constitution;
  - v. A temporary injunction prohibiting the City of Austin from enforcing the Paid Sick Leave Ordinance;
  - vi. A permanent injunction prohibiting the City of Austin from enforcing the Paid Sick Leave Ordinance;
  - vii. An award to Plaintiffs of their attorneys' fees and reasonable costs; and
  - viii. All other and further relief that this Court may deem proper in law or equity.

Respectfully Submitted,



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### CERTIFICATE OF CONFERENCE

Pursuant to Rule 2.2 of the Local Rules of the District Courts of Travis County, Texas, I hereby certify that on April 24, 2018, I conferred with Counsel for Defendants regarding Plaintiffs' Notice of Hearing. Counsel for Defendants was unable to take a position because this matter has not yet been assigned to an Assistant City Attorney.



ROBERT HENNEKE

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via personal service on all Defendants.



ROBERT HENNEKE